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IN THE

Supreme Court of the United States

October Term, 1962

No. 531

SAMUEL KLAPHOLZ,

Petitioner.

AGAINST

P. A. ESPERDY, as District Director for the New York District, Immigration and Naturalization Service, United States Department of Justice,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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SAMUEL KLAPHOLZ,

Petitioner,

AGAINST

P. A. ESPERDY, as District Director for the New York District, Immigration and Naturalization Service, United States Department of Justice,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit, affirming an order of the District Court for the Southern District of New York, dismissing an action for review of an exclusion order and for Declaratory Judgment.

Jurisdiction

The order of the Court of Appeals was rendered and entered on May 18, 1962. The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 U. S. C. and Section 1(b) of Rule 19 of the Revised Rules of this Court as amended.

Statement of Matter Involved

Petitioner was originally admitted to the United States for permanent residence on July 17, 1947. Thereafter he was absent from this country on four (4) occasions, and, remaining without the United States longer than permitted, he lost his status as a permanent resident. In the interim, petitioner's wife and children became United States citizens. Subsequently, a petition, by the citizen spouse, to accord a nonquota immigrant visa to the petitioner was approved. In March, 1956, the United States Consular Office in Germany approved petitioner's application and issued an immigrant visa to him for entry to the United States.

On July 30, 1956, the petitioner arrived aboard the s/s United States, at the port of New York, in possession of said nonquota immigrant visa. As is customary, Immigration Officers boarded the s/s United States on July 30, 1956, and interviewed the petitioner in connection with his application for entry. After this interview, petitioner was directed to wait. The immigration officer telephoned the office of the United States Attorney for the Eastern District of New York. As a result of said telephone call, a United States Marshal appeared aboard the ship and took petitioner into custody. He was detained at the Federal House of Detention in New York, to await further action by the United States Attorney.

Petitioner had not, at this time, been advised as to his immigration status. Twenty-eight (28) days later, for the first time, petitioner was advised by the Immigration Service that he had been paroled into the United States.

On October 12, 1956, petitioner pleaded guilty to a charge of violation of 18 U. S. C. Sections 2 and 545. He was, thereafter, convicted and sentenced to fifteen (15) months at the Federal Correctional Institution at Danbury, Connecticut.

Nine (9) months after his arrival, and application for admission, the petitioner was finally accorded a hearing by the Immigration Service. The Special Inquiry Officer held that petitioner was excludable as one convicted of a crime prior to admission. This hearing was later reopened in order to accord petitioner an opportunity to apply for a waiver of excludability pursuant to Section 5 of the Act of September 11, 1957 (71 Stat. 640) (8 U. S. C. 1182(b), 1958 Ed.).

At the reopened hearing the same Special Inquiry Officer re-affirmed his prior decision holding the petitioner to be an excludable alien, and further, denied petitioner's application for a waiver of excludability. An appeal was taken, from this decision, to the Board of Immigration Appeals.

The Board of Immigration Appeals reversed the Special Inquiry Officer, and directed that petitioner be admitted as a permanent resident on the ground that the petitioner was admissible at the time of his application for admission, to wit: July 30, 1956. This matter came before the Board of Immigration Appeals on two subsequent motions, and on both occasions, the Board of Immigration Appeals reaffirmed its decision. The matter was certified to the Attorney General, who reversed the Board of Immigration Appeals and reaffirmed the original decision of the Special Inquiry Officer.

Judicial review of this decision was sought in the United States District Court for the Southern District

of New York. The Counsel for the Immigration and Naturalization Service moved for summary judgment and his motion was granted by the Honorable Thomas F. Murphy.

An appeal from this decision was taken to the United States Circuit Court of Appeals for the Second Circuit. On May 18, 1962, the Court affirmed the decision of the District Court, dismissing petitioner's action. It is to review this decision that this petition for a Writ of Certiorari is now made.

Questions Presented

There are grave and far reaching questions involved herein which affect not only this petitioner, but virtually every alien seeking admission to the United States. These questions are specifically:

1) Is not the parole power of the Attorney General (Immigration and Nationality Act Section 212(d)(5) (66 Stat. 163; 8 U. S. C. Section 1182(d)(5)) limited to otherwise inadmissible aliens?

2) Is not the question of admissibility to be determined in accordance with the facts as they exist at the time of the application for admission?

Why Certiorari Should Be Granted

The parole power granted to the Attorney General by Section 212(d)(5), *supra*, is limited to otherwise inadmissible aliens. The holdings of the Courts below that the Attorney General did not exceed his authority in paroling an admissible alien were in complete contradiction of the Statute and the intent of Congress.

Not only does every prior judicial decision, dealing with the parole power, involve otherwise inadmissable aliens, but the prior administrative decisions clearly state that the parole power is specifically limited to *otherwise inadmissible aliens.*

> "Parole into the United States of an applicant for admission *presupposes that he is inadmissible* otherwise he should be *admitted, not paroled.* * * *" (Emphasis supplied.) *In the Matter of B* —, 2 I & N Dec. 172, at page 176.

The intention of the Congress in authorizing the parole power is clearly set forth in House Rep. No. 1365, 87th Cong. 2nd Sess. 57 (1952), accompanying H. R. 5678 (the Immigration and Nationality Act).

> "Discretionary authority is vested in the Attorney General in paragraph 5 of Section 212(d) to parole into the United States temporarily *otherwise inadmissible aliens* for emergent reasons or for reasons deemed strictly in the public interest. Such parole shall not be regarded as an admission of the alien and when the purpose of such parole shall have been served, the alien shall forthwith return or be returned to the custody from which he was paroled, and shall continue to be dealt with in the same manner as any other alien applying for admission. The provision in the instant bill represents the acceptance of the recommendation of the Attorney General with reference to this form of discretionary relief. The Committee believes that the broader discretionary authority is necessary to permit the Attorney General to parole *inadmissible aliens* into the United States in emergent cases, such as the case of an alien who requires immediate medical attention before there

has been an opportunity for an Immigration Officer to inspect him and in cases where it is strictly in the public interest to have an *inadmissible alien* present in the United States, such as, for instance, a witness or for purposes of prosecution" (emphasis supplied).

We do not see how the intent of Congress can be more clearly stated than for a House Report to contain the phrase "inadmissible aliens" no less than three (3) separate times in one short paragraph.

This petitioner was concededly admissible at the time of his alleged parole, and therefore, instead of being paroled he should have been admitted.

The Courts below erred in holding that the question of admissibility may be determined on the facts as they exist at the time of hearing rather than as of the time of the application for admission.

The fact that admissibility is to be determined on the facts as they exist at the time of the application for admission has been well established by Statute, administrative and judicial decisions and the clearly illustrated intent of Congress.

Section 212(a) of the Immigration and Nationality Act (8 U. S. C. 1182(a)), the section of the law dealing specifically with the various classes of excludable aliens, employs phrases such as "at the time of application for admission", "prior to the date of application for admission" and "when applying for admission", no less than ten (10) times. Certainly the language of this Statute is extremely clear. The question of admissibility is to be determined on the facts as they exist at the time of application for admission and not at some undetermined future date.

This Court, in *Tulsidas* v. *Insular Collector of Customs*, 262 U. S. 258 at page 264, said:

> "The law defines the classes of aliens which shall be excluded from admission to the United States, but provides that the exclusion shall not apply to persons having the 'status or occupations' of 'merchants'. This means necessarily having the 'status' *at the time admission is sought*, not a status to come or to be established. If the latter, what indulgence of time is to be given for its attainment, and how is detriment to the policy of law while the status is attaining to be prevented, and how terminate the indulgence and the detriment and execute the law. There can be no answer to these questions consistent with the denial that the status of merchant must exist at the time of application for admission" (emphasis supplied).

Further, in *Gegiow* v. *Uhl*, 239 U. S. 3 at page 9, this Court said:

> "The statute by enumerating the conditions upon which the allowance to land may be denied prohibits the denial in other cases."

The decisions of this Court established beyond question the fact that admissibility is to be determined on the facts in existence at the time of the application for admission and any facts to come into existence at a future time are of no consequence.

Also, see: *Conkendall* v. *Skrmetta*, 22 F. 2d 120; *Howe* v. *U. S.*, 247 Fed. 292; *Tillinghast* v. *Wong Wing*, 22 F. 2d 299; *Wong Gook Chun* v. *Proctor*, 84 F. 2d 763.

The intention of Congress that admissibility is to be determined as of the time of the application for admis-

sion is clearly and repeatedly set forth. Not only does the section of the Act dealing with exclusion stress this, but a recent amendment to Section 245(a) of the Immigration and Nationality Act (8 U. S. C. 1255(a)) which provides in part:

> "The status of an alien, other than an alien crewman, who was inspected and admitted or *paroled* into the United States may be adjusted by the Attorney General * * *" (emphasis supplied),

illustrates this to be the intent of the Congress. This amendment added the words "or paroled". For what reason does this section allow a parolee to make a new application for adjustment of status to that of a permanent resident if not to permit facts, not in existence at the time of the original application for admission, to be considered in connection with the question of admissibility at the time of this new application for admission.

The Courts below, in seeking to justify a ruling in contravention of the Statute, prior judicial precedents, and the very intent of the Congress, have raised "humane" issues. They argue that petitioner's contention would jeopardize or penalize the future status of persons paroled for reasons of illness or political necessity, such as the Hungarian refugees, and make them forever inadmissible as having been so at the time of their application for admission. Such a conclusion is completely without foundation in law. Firstly, waivers of excludability in certain cases, provisions for subsequent admission of persons excludable for certain medical reasons and situations such as the Hungarian refugee program, have all been covered by separate and specific legislation none of which would have been necessary were the law as the Courts below have interpreted it. Secondly, those humane cases of parolees not covered by specific legislation

are provided for in the catch-all provision of Section 245(a) *supra*, permitting a new application for admission to be made by a parolee.

The Courts below erred in holding that the parole power applies to aliens other than those who are otherwise inadmissible. Further: the Courts below erred in finding admissibility to be determined at some undetermined time subsequent to the time of the application for admission.

These holdings are in complete opposition to the clear language of the Statute and judicial precedents. Rather than protecting humane and liberal interests, these decisions leave the way open for abuses and extremely restrictive measures on the part of an administrative agency.

Wherefore, petitioner prays that a Writ of Certiorari issue so that a full review of these basic and far reaching issues may be had.

Dated: New York, New York, July 30, 1962.

Respectfully submitted,

JACKSON G. COOK,
Attorney for Petitioner.

STUART WADLER and
MOREY J. HERZOG,
Of Counsel.

Opinion of United States Court of Appeals For the Second Circuit

PER CURIAM:

This is an appeal from a summary judgment which dismissed a complaint seeking review of an exclusion order issued by the District Director for the New York District of the Immigration and Naturalization Service,[1] and a declaratory judgment that Klapholz, an alien, was admitted to the United States as an immigrant. In the District Court Klapholz challenged the exclusion order on numerous grounds, all of which were rejected in a comprehensive and well reasoned opinion by Judge Thomas F. Murphy.[2]

The principal facts are not in dispute. Klapholz, possessed of a valid immigration visa, was taken into custody by a United States Marshal when he arrived in New York aboard the S.S. United States on July 30, 1956.[3] His visa was not stamped "Admitted" by the Immigration Officer aboard ship and he was not given an alien registration receipt card. Instead he was subsequently notified that he had been paroled into the United States "pending completion of primary inspection," and later received a form notice stating that he would be given a hearing on his

[1] The complaint also alleged an abuse of discretion in defendant's refusal of a waiver of excludability. This was rejected by the District Court, and the order, insofar as it pertains to the application for waiver, is not appealed.

[2] *Klapholz v. Esperdy*, 201 F. Supp. 294 (S. D. N. Y. 1961).

[3] Klapholz's brother and sister in law had been indicted in the Eastern District of New York two years earlier on a charge of receiving smuggled shipments of diamonds from Germany to avoid duty costs. Apparently Klapholz was suspected by the authorities in connection with the pending indictment against his brother and sister-in-law and his own possible involvement with smuggling activities.

application for admission by a Special Inquiry Officer. Meanwhile, Klapholz pleaded guilty to an information charging certain smuggling offenses, and was sentenced to 15 months imprisonment. On January 23, 1957 the immigration hearing was held at the institution in which Klapholz was confined; and the Special Inquiry Officer determined that he was excludable because of the smuggling conviction, a determination ultimately upheld by the Attorney General.

For the reasons stated by the court below, we agree that Klapholz's parole into the United States was a proper exercise of authority granted by Section 212(d)(5) of the Immigration and Nationality Act, 8 U. S. C. 1182(d)(5); that Klapholz's detention by non-immigration officers did not constitute an admission, "de facto" or otherwise; and that the failure to present him with a form notice of hearing until he was being detained on criminal charges is immaterial in the absence of any allegation that the hearing was thereby rendered unfair. Moreover, the implication of Section 212(d)(5) that upon termination of parole an alien's application can be considered in light of events which occurred in the interim, e.g., cure of a disease which might have required exclusion, leads us to reject appellant's claim that his conviction of a crime involving moral turpitude during the period of his parole pending completion of primary inspection did not render him excludable. 8 U. S. C. 1182(a)(9).

Affirmed.

Judgment of United States Court of Appeals For the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighteenth day of May one thousand nine hundred and sixty-two.

Present:

HON. J. JOSEPH SMITH,
HON. IRVING R. KAUFMAN,
HON. THURGOOD MARSHALL,
Circuit Judges.

SAMUEL KLAMHOLZ,

Plaintiff-Appellant,

v.

P. A. ESPERDY, as District Director for the New York District, Immigration and Naturalization Service, United States Department of Justice,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the

Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

By VINCENT A. CARLIN
Chief Deputy Clerk

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 331

SAMUEL KLAPHOLZ, PETITIONER

v.

P. A. ESPERDY, AS DISTRICT DIRECTOR FOR THE NEW YORK DISTRICT, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (R.[1] 64-66; Pet. App. 11-12) is reported at 302 F. 2d 928. The opinion of the district court (R. 49-63) is reported at 201 F. Supp. 294. The opinion of the

[1] "R." refers to the printed record, consisting of the Appendix to the petitioner's brief in the court of appeals and the proceedings in that court.

Attorney General appears at R. 42-48. The opinions of the Board of Immigration Appeals appear at R. 3-12, 13-31, 32-41.

JURISDICTION

The judgment of the court of appeals was entered on May 18, 1962 (R. 67-68; Pet. App. 13-14). The petition for a writ of certiorari was filed on August 14, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an alien applicant for admission to the United States, whom the Attorney General temporarily paroles into the United States under Section 212(d)(5) of the Immigration and Nationality Act, may thereafter be excluded as an alien convicted before entry of a crime involving moral turpitude, on the basis of a conviction occurring during the parole period for an offense against the United States committed prior to his arrival.

STATUTES INVOLVED

Section 212 (a)(9) of the Immigration and Nationality Act, 66 Stat. 182, 8 U.S.C. 1182(a)(9), provides in pertinent part:

> SEC. 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:
>
> * * * * *

> (9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime; * * *

* * * * *

Section 212(d)(5) of the same Act, 66 Stat. 188, 8 U.S.C. 1182(d)(5), provides:

> (5) The Attorney General may, in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

STATEMENT

The pertinent facts are not in dispute and may be summarized as follows:

Petitioner is a 46-year-old alien, a native and citizen of Germany. He was first admitted to the United States, for permanent residence, in July 1947, but he subsequently lost his resident status by leaving the country and remaining abroad for longer than

the permissible period. His last departure—his fourth since his original entry—was in November 1950. In March 1956, he was granted a non-quota immigrant visa by the United States Consular Office in Germany on the basis of the United States citizenship of his wife, who had remained in this country and had in the meantime been naturalized, and on July 30, 1956, in possession of this visa, he presented himself for admission at the port of New York aboard the S.S. *United States*. (R. 4, 33, 42, 50; Pet. 2.)

Prior to his arrival, an investigation had been conducted by the customs and immigration authorities which implicated petitioner in large-scale diamond-smuggling. His brother and sister-in-law, who were charged as co-conspirators with him in these activities, had been arrested on August 4, 1954. Petitioner knew of their arrests at the time of his arrival, and he was also aware that charges were pending against him. (R. 42-43, 50.)

In the course of petitioner's shipboard inspection, the immigrant inspector, finding petitioner's name in a "Look Out" book, deferred further examination and telephoned the United States Attorney for the Eastern District of New York. A short while later a representative of the office of the United States Marshal for that district boarded the ship, took petitioner into custody, and lodged him in the Federal House of Detention in New York City, to await further action by the United States Attorney. (R. 4, 14, 33, 50.)

On August 27, 1956, petitioner was informed by the Immigration and Naturalization Service that he

was paroled into the United States pursuant to Section 212(d)(5) of the Immigration and Nationality Act (*supra*, p. 3), "pending completion of primary inspection" (R. 14, 33, 43, 50).[2]

On October 29, 1956, petitioner pleaded guilty in the Eastern District of New York to an information charging him with having knowingly, and with intent to defraud the United States, caused, commanded and procured the smuggling into the United States, on August 2, 1954, of cut and polished diamonds worth $243,810, in violation of Sections 2 and 545 of Title 18 of the United States Code. On December 17, 1956, he was sentenced for this offense to 15 months' imprisonment. (R. 4, 33, 43, 51.)

On January 23, 1957, a special inquiry officer of the Immigration and Naturalization Service conducted a hearing on the question of petitioner's admissibility to the United States at the Federal Correctional Institution, Danbury, Connecticut, where petitioner was serving his sentence. On May 3, 1957, the officer found him inadmissible, under Section 212(a)(9) of the Immigration and Nationality Act (*supra*, pp.

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[2] In petitioner's administrative file there appears the Form I-122 ("NOTICE TO ALIEN DETAINED FOR HEARING BY SPECIAL INQUIRY OFFICER"), dated August 2, 1956, and a copy of a letter dated August 3, 1956, to the Warden of the Federal House of Detention requesting that the form be given to petitioner (R. 4-5, 50-51). Petitioner claimed in the exclusion proceedings that he did not receive this form, and that the first time he received such a form was on December 19, 1956 (R. 5, 51). The special inquiry officer apparently made no determination as to when petitioner first received this formal notice. In our view, the date is immaterial.

2-3), as an alien who had been convicted prior to entry of a crime involving moral turpitude, *viz.*, the smuggling offense for which he was then serving his sentence. (R. 4, 5, 43, 51.)[3]

On appeal by petitioner to the Board of Immigration Appeals, the Board, being of the view that the question of petitioner's excludability had to be determined "as of the date of his application for admission—July 30, 1956" (R. 11), reversed the order of the special inquiry officer and directed that petitioner be admitted (R. 3-12). On motion by the Service for reconsideration, the Board adhered to its decision (R. 13-31; see also R. 32-41). The Attorney General reversed the order of the Board and reinstated the decision of the special inquiry officer (R. 42-48).

Petitioner thereafter petitioned the United States District Court for the Southern District of New York for a declaratory judgment holding him admissible. The district court granted a motion by respondent for summary judgment and dismissed the petition

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[3] The special inquiry officer subsequently reopened the hearing to permit petitioner to apply for waiver of excludability pursuant to Section 5 of the Act of September 11, 1957, 71 Stat. 640, 8 U.S.C. (Supp. III) 1182h (authorizing the Attorney General, in his discretion, to admit persons who are excludable on specified grounds, including those defined in Section 212(a)(9), where exclusion would result in hardship to a citizen spouse or child and admission would not be prejudicial to the national welfare, safety or security). At the reopened hearing, the requested waiver was denied. This aspect of the special inquiry officer's decision was subsequently sustained by the Board of Immigration Appeals (see R. 63), and is no longer is issue.

(R. 49-63). The court of appeals affirmed (R. 64-67; Pet. App. 11-14).

ARGUMENT

1. This case does *not* present the question whether exclusion of an alien may be based on post-entry, or post-application, conduct.[1] The offense which led to petitioner's exclusion had been consummated long before he applied for admission. The only issue here is whether the admission of an alien, who the competent authorities have good reason to suspect has already committed a disqualifying offense, may be deferred pending determination, by orderly legal process, of his actual guilt or innocence.

The Immigration and Nationality Act does not require an immediate, irrevocable ruling on admissibility the moment the alien presents himself for entry. On the contrary, in fairness to the applicant and to the public interest, the Act expressly provides for deferring decision in doubtful cases, without prejudice to the ultimate determination. See 8 U.S.C. 1222, 1223(a), 1224, 1225, 1226. The Act further provides for parole during this period of temporary indecision. 8 U.S.C. 1182(d)(5). But such parole "shall not be regarded as an admission of the alien"; he remains an "applicant for admission to the United States," *id.*, to the same extent as though detained

[1] Conviction of a crime involving moral turpitude committed within five years *after entry* is ground for *deportation*. 8 U.S.C. 1251(a)(1). Accordingly, there will normally be no occasion to invoke *exclusion* when criminal conduct follows entry.

at Ellis Island. See *Leng May Ma* v. *Barber*, 357 U.S. 185, 188-190; *Kaplan* v. *Tod*, 267 U.S. 228, 230. What, then, if, during this interval before admission, the alien admits to, or is convicted of, an offense involving moral turpitude committed before his arrival here? The Act, 8 U.S.C. 1182(a)(9), declares him excludable. Must the Service close its ears to the confession simply because it occurred after the alien *first* applied for entry? Such a result would defeat the purpose of the immigration laws. Nothing in the text requires it. On the contrary, the very section here invoked, 8 U.S.C. 1182(a)(9), obviously contemplates that the alien may admit his crime after his arrival and initial application. And no distinction is drawn between a subsequent confession and a subsequent conviction. It follows that petitioner, a confessed and convicted smuggler before entry,[5] was properly excluded.[6]

---

[5] Since petitioner entered a plea of guilty to the charge of smuggling, his exclusion is supported by both an admission and a conviction.

[6] *Tulsidas* v. *Insular Collector of Customs*, 262 U.S. 258, cited by petitioner (Pet. 7), gives no support to his position. In that case, as noted by the district court (R. 61), this Court held merely that one who claimed exemption from exclusion as a "merchant" was required to have that status "at the time admission [was] sought" and that he could not rely on a "status to come or to be established" (262 U.S. at 261). The case involved no problem relating to parole and is not otherwise relevant.

We do not understand petitioner's contention (Pet. 8) with respect to the recent amendment to 8 U.S.C. (Supp. III) 1255(a) which permits the Attorney General to adjust the

2. Petitioner, to avoid this conclusion, argues that the immigration officials, in paroling him into the United States, acted beyond the scope of their authority, and, unwittingly, admitted him. The power of the Service to take such action is limited, he contends, to aliens who are inadmissible when they first seek entry (Pet. 4-9). The statute itself contains no such limitation, however. It authorizes the Attorney General, in his discretion, to parole into the United States temporarily, under such conditions as he may prescribe, "for emergent reasons or for reasons deemed strictly in the public interest," "any alien applying for admission to the United States." The legislative history of the section makes clear, moreover, that Congress specifically contemplated that the "reasons deemed strictly in the public interest," for which the power conferred was to be exercised, should include "purposes of prosecution" (S. Rep. 1137, 82d Cong., 2d sess., p. 13; H. Rep. 1365, 82d Cong., 2d sess., p. 52)—the very purpose for which parole was here used.[7]

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status of a parolee. As he says, the purpose of the provision is to permit the permanent entry of an alien, originally inadmissible, whose disqualification has since been removed. But it does not follow that the alien who becomes disqualified during his parole can be admitted.

[7] It is true, as petitioner points out (Pet. 5-6), that the committee reports, in commenting on the purpose of Section 212(d)(5), refer to the persons whose admission on parole the section authorizes as "inadmissible" and "otherwise inadmissible" aliens (S. Rep. 1137, 82d Cong., 2d sess., pp. 12-13; H. Rep. 1365, 82d Cong., 2d sess., p. 52). We submit, however, that these references in the committee reports are

At the time of petitioner's arrival, formal charges were outstanding accusing him of a serious offense against the United States. In these circumstances it was undeniably "in the public interest" for the Attorney General, acting under the broad authority given him by the statute, to parole him ashore in order that he might be prosecuted.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

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not sufficient to warrant the inference that the Attorney General's authority was intended by Congress to be limited to aliens who were inadmissible at the time of their initial applications for entry. If Congress had intended thus to circumscribe the Attorney General's power, it would have been easy enough to make the limitation explicit. It seems more likely that the committee reports, in the references relied upon by petitioner, were merely alluding to typical situations to which the parole power would apply.

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